

# Custody and Detention

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## 3.1 Taking a Juvenile Into Custody After Commission of an Offense

MCL 712A.14; MSA 27.3178(598.14), MCR 5.933, and MCR 5.934 discuss the procedures to follow when taking a juvenile into temporary custody and when detaining or “lodging” a juvenile pending a preliminary hearing in the Family Division. See MCR 5.903(B)(1) (detention means court-approved removal of a juvenile from parental custody). These procedures apply whenever a juvenile has committed an “offense.”

Under MCR 5.903(B)(4), “offense by a juvenile” includes status offenses, being a “wayward minor,” and violations of criminal statutes, ordinances, and traffic laws other than civil infractions.

\*See Chapter 22.

The procedures in MCL 712A.14; MSA 27.3178(598.14), MCR 5.933, and MCR 5.934 do not apply, however, once a juvenile is charged as an adult pursuant to the “automatic” waiver statute, MCL 600.606; MSA 27A.606. If the prosecuting attorney has reason to believe that a juvenile between the ages of 14 and 17 has committed a specified juvenile violation, the prosecuting attorney may authorize the filing of a complaint and warrant with a magistrate concerning a juvenile. MCL 764.1f(1); MSA 28.860(6)(1), and MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1).\*

**NOTE:** Often the juvenile who becomes the subject of the “automatic” waiver procedure is initially detained on a juvenile complaint, upon authorization to detain from a court representative (usually the referee on duty). Typically, when the juvenile is apprehended at night, the police present the complaint to the prosecutor the next morning, and the prosecutor then writes the criminal complaint and warrant rather than a juvenile petition. The juvenile is then arraigned in district court, and the juvenile case is “closed.”

## 3.2 The “Immediacy Rule”

\*See Section 9.16 (violation of “immediacy rule” and the voluntariness of confessions).

Except as otherwise provided in MCL 600.606; MSA 27A.606 (“automatic” waiver statute), if a child less than 17 years of age is arrested, with or without a warrant, the child must immediately be taken before the Family Division of the county where the offense was allegedly committed. MCL 764.27; MSA 28.886. Police officers may stop at the police station to complete booking procedures, type a delinquency petition, and, as required by statute, fingerprint the juvenile. *People v Hammond*, 27 Mich App 490, 493–94 (1970), *People v Coleman*, 19 Mich App 250, 253–54 (1969), and *People v Morris*, 57 Mich App 573, 575–76 (1975).\*

\*See Section 3.1, Note, above.

Where the prosecutor has authorized the filing of a complaint in district court under the “automatic” waiver statute, the juvenile need not be taken to the Family Division following apprehension on an alleged specified juvenile violation, but to the district court for arraignment on the complaint and arrest warrant. In the absence of an authorization from the prosecuting attorney, however, the juvenile must be brought to the Family Division or to a designated facility if the court is not open. *People v Brooks*, 184 Mich App 793, 797–98 (1990), and *People v Spearman*, 195 Mich App 434, 443–45 (1992).\*

## 3.3 Obtaining Custody of a Juvenile Without a Family Division Order

### A. Obligations of Officer or Agent Immediately After a Juvenile Is Taken Into Custody

MCL 712A.14(1); MSA 27.3178(598.14)(1), states that a police officer, sheriff, deputy sheriff, county agent, or probation officer may, without a

court order, take into custody any juvenile who is found violating any law or ordinance, or whose surroundings are such as to endanger the juvenile's health, morals, or welfare. After apprehending the juvenile, the officer or agent must:

- F immediately attempt to notify the juvenile's parent, guardian, or custodian, and
- F while awaiting arrival of the parent, guardian, or custodian, hold the juvenile in a detention facility in which the juvenile can be isolated so as to prevent any verbal, visual, or physical contact with any adult prisoner.

See also MCR 5.933(D) (court rule mirrors statutory language on separation of juvenile from adult prisoners).

## **B. Obligations of Officer or Agent After Notification or Attempt to Notify Parent, Guardian, or Custodian**

MCR 5.933(A)(1)–(3) discuss in detail the procedures that must be followed by the officer or agent following the notification or attempt to notify the juvenile's parent, guardian, or custodian. When the officer or agent does not have a prosecutor's complaint and warrant authorization, he or she may warn and release the juvenile, or refer the juvenile to a diversion program.\* If neither of these is done, the officer or agent may:

- (1) issue a citation or ticket to appear at a time and date to be set by the court and release the juvenile;
- (2) accept a written promise of the parent to bring the juvenile to court, if requested, at a date and time to be set by the court, and release the juvenile to the parent; or
- (3) take the juvenile into custody and submit a petition.

MCR 5.933(A)(1)–(3).

**NOTE:** "Officer" means a government official with the power to arrest or any other person designated by the court to apprehend, detain, or place a minor. MCR 5.903(A)(11). "Court intake workers" often make the initial detention determination.

\*See Section 6.3 for a detailed explanation of the Juvenile Diversion Act.

## **C. Factors to Consider When Deciding Whether Juvenile Should Be Released From Custody**

MCR 5.933(A)(3)(a)–(b) set out the factors the officer or agent should consider in deciding whether to maintain custody of the juvenile. The officer should take the juvenile into custody and submit a petition under MCR 5.933(A)(3) if either of the following circumstances exist:

(a) the officer has reason to believe that due to the nature of the offense, the interest of the juvenile or the interest of the public would not be protected by release of the juvenile, or

(b) a parent cannot be located or the parent refuses to take custody of the child.

MCL 712A.14(2); MSA 27.3178(598.14)(2), adds that if the child is not released, the child and his or her parents, guardian, or custodian must immediately be brought before the court for a preliminary hearing on the juvenile. At the conclusion of the preliminary hearing, the court will either authorize the petition to be filed or will dismiss the complaint and release the juvenile.

#### **D. Obligation to Notify Family Division If Juvenile Is Not Released From Custody**

MCR 5.933(C)(1)–(3) requires the officer or agent taking custody of the juvenile to immediately contact the court if:

(1) the officer or agent detains the juvenile;

(2) the officer or agent is unable to reach a parent who will appear promptly to accept custody of the juvenile; or

(3) the parent will not agree to sign a written promise to bring the juvenile to court.

#### **E. Additional Obligations of Officer or Agent If Juvenile Is Not Released**

MCR 5.934(A)(1)–(4) set forth four obligations of an officer or agent when a juvenile is apprehended and not released and the prosecutor has not authorized the filing of a complaint and warrant charging the juvenile as an adult pursuant to the “automatic” waiver statute. The officer or agent must:

(1) forthwith take the juvenile before the court for a preliminary hearing, or to a place designated by the court pending the scheduling of a preliminary hearing;

(2) ensure that a petition [or complaint] is prepared and presented to the court;

(3) notify the parent that the juvenile has been detained and that the presence of the parent at the preliminary hearing is necessary; and

(4) prepare a custody statement\* for submission to the court including:

\*See Form JC 02.

(a) the grounds for and the time and location of the detention, and

(b) the names of persons notified and the time of notification, or the reason for failure to notify.

**NOTE:** The requirement that the officer or agent bring the juvenile “forthwith” before the court for a preliminary hearing must be distinguished from “immediately” bringing the juvenile before the court. “Forthwith” allows for police stationhouse procedures — fingerprinting, juvenile “processing.” It does not allow for lengthy interrogations, however. See *People v Hammond*, 27 Mich App 490, 493–94 (1970), *People v Coleman*, 19 Mich App 250, 253–54 (1969), *People v Morris*, 57 Mich App 573, 575–76 (1975), and Section 9.16 (totality-of-the-circumstances test is used to determine voluntariness of confessions obtained during police interrogation).

## F. Obligations of Officer or Agent If Family Division Is Not Open

MCR 5.934(B)(1) states that when a juvenile is apprehended without a court order and the court is not open, the juvenile may be detained pending a preliminary hearing if no parent can be located, or if the juvenile or the offense meets the criteria set forth in MCR 5.935(D)(2).\*

\*See Section 3.4, below, for a list of these criteria.

The court must designate a judge, referee, or other person who may be contacted by the officer taking a juvenile into custody when the court is not open. In each county there must be a designated facility open at all times at which an officer may obtain the name of the person to be contacted for permission to detain the juvenile pending preliminary hearing. MCR 5.934(B)(2).

## G. Emergency Removal of Native American Juveniles Charged With Status Offenses

An Indian child charged with a status offense\* who resides or is domiciled on a reservation shall not be removed from a parent or Indian custodian unless the removal is to prevent immediate physical harm to the child. An Indian child not residing or domiciled on a reservation may be temporarily removed if the child’s health, safety, or welfare is endangered. MCR 5.980(B). See also 25 USC 1922.

\*See Section 2.3 for a definition of status offenses.

## 3.4 Detention Pending Investigation and Preliminary Hearing in Family Division

If a complaint has been made, or a petition, supplemental petition, or petition for revocation of probation has been filed, the court may detain the child in a facility the court shall designate or release the child in the custody of the

child's parent, guardian, or custodian pending a hearing. MCL 712A.14(3); MSA 27.3178(598.14)(3), and MCL 712A.15(1); MSA 27.3178(598.15)(1).

Pretrial detention may not be ordered unless there is probable cause to believe that the juvenile committed an offense, MCR 5.935(D)(1), and one or more of the following circumstances are present:

- (a) the offense alleged to have been committed by the juvenile is so serious that release would endanger the public safety;
- (b) the juvenile charged with a major offense (a felony) will likely commit another offense pending trial if released, and
  - (i) another petition is pending against the juvenile, or
  - (ii) the juvenile is on probation, or
  - (iii) the juvenile has a prior adjudication but is not under the court's jurisdiction at the time of apprehension;
- (c) there is a substantial likelihood that if the juvenile is released to the parent, with or without conditions, the juvenile will fail to appear at the next court proceeding;
- (d) pretrial detention is otherwise specifically authorized by law.

MCR 5.935(D)(2)(a)–(d).

MCL 712A.15(2)(a)–(e); MSA 27.3178(598.15)(2)(a)–(e), provide some other circumstances that allow for pretrial detention. The statute states that detention pending a preliminary hearing is limited to the following juveniles:

- (a) those whose home conditions make immediate removal necessary;
- (b) those who have a record of unexcused failures to appear at juvenile court proceedings;
- (c) those who have run away from home;\*
- (d) those who have failed to remain in a detention or a nonsecure facility or placement in violation of a court order; and
- (e) those whose offenses are so serious that release would endanger public safety. See *Schall v Martin*, 467 US 253, 265; 104 SCt 2403; 81 L Ed 2d 207 (1984).

Note that MCR 5.935(D)(2)(a) is identical to MCL 712A.15(2)(e); MSA 27.3178(598.15)(2)(e).

\*But see Section 3.9, below, for limitations on detention of status offenders.

### 3.5 Detention When Family Division Issues an Order to Apprehend a Juvenile

MCR 5.933(B) states that the court may issue an order\* to apprehend a juvenile when a petition is presented to the court and probable cause exists to believe that a juvenile has committed an offense.

The court order may include authorization to:

- (1) enter specified premises as required for the purpose of bringing the juvenile before the court, and
- (2) detain the juvenile pending a preliminary hearing.

MCR 5.933(B)(1)–(2).

The court may issue an order authorizing a peace officer or other person designated by the court to apprehend a juvenile who is absent without leave from an institution or agency to which the juvenile has been committed pursuant to MCL 712A.18; MSA 27.3178(598.18), has violated probation, or has failed to appear for a hearing on a petition. MCL 712A.2c; MSA 27.3178(598.2c).

\*See Form JC 05, which may also be used as authority to apprehend a juvenile who has failed to appear at a hearing or is truant from placement.

### 3.6 Time Requirements for Preliminary Hearing in Family Division When Juvenile Is Detained

MCR 5.935(A)(1) states that the preliminary hearing\* must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays, or the juvenile must be released.

Under MCR 5.935(A)(2)(a)–(b), the court may adjourn the preliminary hearing for up to 14 days:

- (a) to secure the attendance of the juvenile’s parents or witnesses, or
- (b) for other good cause shown.

\*See Sections 7.8–7.20 for the requirements for preliminary hearings.

### 3.7 Special Adjournments to Allow Prosecutor to Decide Whether to Proceed Under the “Automatic” Waiver Statute for “Life Offenses”

The Family Division may grant special adjournments\* when the juvenile is between the ages of 14 and 17 years of age and is alleged to have committed a specified juvenile violation. See MCR 5.935(A)(3).

\*See Form MC 309.

**NOTE 1:** MCR 5.935(A)(3), which was adopted in 1988, has not been amended to reflect the legislative changes made to the “automatic” waiver statutes. In 1996, the Legislature increased the number of offenses eligible for “automatic” waiver from “life offenses” to “specified juvenile violations,” and lowered the age of eligibility from 15 years to 14 years. See 1996 PA 255 and 260, effective January 1, 1997, amending MCL 600.606(2); MSA 27A.606(2), and MCL 764.1f(2); MSA 28.860(6)(2). Therefore, the “special adjournments” referred to in MCR 5.935(A)(3) should be made available to the prosecuting attorney whenever a juvenile over 14 years of age is charged with a specified juvenile violation.

\*See Section 3.4, above, for a discussion of detention considerations.

The court, upon the request of the prosecuting attorney, shall adjourn the preliminary hearing for up to five days to give the prosecuting attorney an opportunity to determine whether to authorize the filing of a warrant and complaint in district court. MCR 5.935(A)(3)(a). MCR 5.935(A)(3)(b)–(c) add that during the special adjournment, the court must defer a decision as to whether to authorize the filing of a petition and must release the juvenile pursuant to MCR 5.935(C) or detain the juvenile pursuant to MCR 5.935(D).\*

\*See Chapters 16–21 (designated proceedings) and Chapter 24 (“traditional” waiver).

If, at the resumption of the preliminary hearing, the prosecutor has not authorized the filing of a warrant and complaint, the Family Division must proceed with the hearing, but this rule does not preclude the prosecutor from seeking a “traditional” waiver of the court’s jurisdiction under MCR 5.950 (if the petition is authorized), or from designating the case under MCR 5.951(A)(3)(a).\*

\*See Section 22.8(A) for a more detailed discussion of the time requirements for preliminary examinations.

**NOTE 2:** If the prosecuting attorney files a complaint and warrant in district court, an arraignment must be held, and following the arraignment, the district court must set a date for the juvenile’s preliminary examination within the next 14 days. The period consumed by the special adjournment, *up to three days*, must be deducted from the 14 days allowed for conduct of the preliminary examination following arraignment. MCR 6.907(C).\*

### 3.8 General Rules for the Detention of Juveniles

\*MCL 712A.16(2)–(6); MSA 27.3178(598.16)(2)–(6), allow for the establishment of foster care and detention homes as agencies of the Family Division.

MCR 5.935(D)(5) provides that the juvenile must be detained in the least restrictive environment that will meet the needs of the juvenile and the public, and that will conform to the requirements of MCL 712A.15; MSA 27.3178(598.15), and MCL 712A.16; MSA 27.3178(598.16).\*

MCL 712A.16(1); MSA 27.3178(598.16)(1), provides that a juvenile under the age of 17 who is taken into custody or detained shall not be confined in any police station, prison, jail, lock-up, or reformatory, or be transported with, or compelled or permitted to associate or mingle with, criminal or dissolute persons. However, except as provided for status offenders and misdemeanants, a juvenile 15 years of age or older whose habits or conduct are considered a menace to other children, or who might not otherwise be safely detained, on order of the court, may be placed in a jail or other place of detention for adults, but in a room or ward separate from adults, and for a period not to exceed 30 days, unless longer detention is necessary for the



service of process. MCL 764.27a(2); MSA 28.886(1)(2), creates the additional restriction that juveniles confined in a jail or other place of detention for adults must be placed in a room or ward out of sight and sound of adults.

MCL 750.139(1); MSA 28.334(1), provides that a child under 16 years of age while under arrest, confinement, or conviction for any crime must not be:

- F placed in any apartment or cell of any prison, or place of confinement with any adult under arrest, confinement, or conviction for a crime;
- F permitted to remain in any court room during the trial of adults; or
- F be transported with adults charged with or convicted of crime.

Any person who violates these provisions shall be guilty of a misdemeanor. MCL 750.139(3); MSA 28.334(3).

### 3.9 Places of Detention for Status Offenders and Misdemeanants\*

\*See Section 2.3 for a list of status offenses.

MCL 712A.15(3) and (5); MSA 27.3178(598.15)(3) and (5), discuss places of detention for juveniles alleged to be status offenders (runaways, habitually disobedient, and/or truant) and misdemeanants:

(3) Status offenders who are not under the court's jurisdiction for a criminal offense must not be detained in any secure detention facility for juvenile offenders unless the court finds that the child willfully violated a court order and the court finds, after a hearing and on the record, that there is not a less restrictive alternative more appropriate to the needs of the child. See 42 USC 5633(a)(12)(A) (status offenders cannot be detained in secure facilities unless they have violated valid court order).

(5) Status offenders and juveniles charged with misdemeanor violations must not be detained in a cell or other secure area of any secure facility designed to incarcerate adults.

**NOTE:** MCL 712A.16(1); MSA 27.3178(598.16)(1), and MCL 712A.15(3) and (5); MSA 27.3178(598.15)(3) and (5), when read together, allow juveniles taken into custody as status offenders who are under the court's jurisdiction for a misdemeanor offense to be placed in secure detention if it is the least restrictive alternative available. Juveniles taken into custody as status offenders who are under the court's jurisdiction for a felony offense may be placed in secure detention, or in jail if the juvenile's habits or conduct are considered a menace to other children, or if the juvenile might not otherwise be safely detained. The juvenile must be kept in a room or ward separate from adults, and for a period not to exceed 30 days, unless longer detention is necessary for the service of process.

\*See Chapters 16–21 (designated proceedings).

### 3.10 Places of Detention for Juveniles Whose Felony Cases Have Been Designated for Criminal Trial in Family Division\*

A juvenile under 17 years of age may be held in the county jail pending trial if the case has been designated for adult trial by the court pursuant to MCL 712A.2d; MSA 27.3178(598.2d). The court must determine that there is probable cause that a felony was committed and that the juvenile committed the felony. This occurs at the preliminary examination held by a Family Division judge. MCR 5.903(D)(5). Prior approval of the county sheriff is required, and the juvenile must be held physically separate from adults. MCL 712A.2(g); MSA 27.3178(598.2)(g), and MCL 764.27a(3); MSA 28.886(1)(3). The court rule governing confinement of the juvenile following a preliminary examination in designated cases, MCR 5.953(G), requires that the juvenile be separated from adult prisoners by sight and sound, which is a more difficult standard to meet.

\*See Sections 16.4 – 16.5 (two types of designated proceedings) and 16.21 (criteria to determine whether to designate case).

**NOTE 1:** Both MCL 712A.2(g); MSA 27.3178(598.2)(g), and MCL 764.27a(3); MSA 28.886(1)(3), provide that a judge of the Family Division has the authority to jail a juvenile if probable cause has been found and if the case has been “designated by the court” under MCL 712A.2d; MSA 27.3178(598.2d). It is unclear whether the authority to jail exists in prosecutor-designated cases as well. In such cases, the court would not have considered the six factors contained in MCL 712A.2d(2)(a)–(f); MSA 27.3178(598.2d)(2)(a)–(f), prior to the designation of the case.\*

MCL 764.27a(4); MSA 28.886(1)(4), states that the court, upon motion of a juvenile or individual under 17 years of age who is subject to confinement in the county jail, may, upon good cause shown, order the juvenile or individual to be confined as otherwise provided by law.

**NOTE 2:** The 30-day limitation on confinement in the county jail does not apply to juveniles who have had their preliminary examination in a designated proceeding. See MCL 712A.16(1); MSA 27.3178(598.16)(1), discussed at Section 3.9, above.

\*See Chapters 22–23 for discussion of “automatic” waiver proceedings.

### 3.11 Places of Detention for Juveniles Charged Under the “Automatic” Waiver Statute\*

**NOTE:** The life offenses enumerated in MCR 6.903(H) have been subsumed in the specified juvenile violations enumerated in MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1), MCL 600.606(2); MSA 27A.606(2), and MCL 764.1f(2); MSA 28.860(6)(2). Although MCR 6.901(B) only provides that the rules in Subchapter 6.900 apply to cases involving enumerated “life offenses,” the discussion in this benchbook assumes that the procedures in Subchapter 6.900 also apply to those “specified juvenile violations” that are not also “life offenses.”

## A. Places of Detention Pending Arraignment

If the prosecutor has authorized the filing of a complaint and warrant, instead of approving the filing of a petition in the Family Division, a juvenile may, following apprehension, be detained pending arraignment:

- (1) in a juvenile facility operated by the county;
- (2) in a regional juvenile detention facility operated by the state;  
or
- (3) in a court-operated facility with the consent of the Family Division or an order of a court as defined in these rules.

MCR 6.907(B)(1)–(3).

The juvenile placed in a detention home operated by the Family Division pending a decision by the prosecuting attorney to authorize the filing of a complaint and warrant in district court may remain there, with the Family Division’s consent, even after the prosecuting attorney’s decision to proceed under the “automatic” waiver statute.\* Under MCR 6.907(B)(3), however, if the Family Division does not consent, or if the circuit court does not order the juvenile to remain in the court-operated facility, the juvenile must be moved to a non-court-operated facility. See Staff Comment following Subchapter 6.900 (“H. Detention”). The Family Division must comply if the circuit court orders the juvenile to remain in the Family Division-operated facility pending trial. MCL 712A.2(f); MSA 27.3178(598.2)(f).

\*See Sections 3.2 (“immediacy rule”) and 3.7, above (special adjournments in “automatic” waiver cases).

If no juvenile facility is reasonably available and if it is apparent that the juvenile may not otherwise be safely detained, the magistrate may, without a hearing, authorize that the juvenile be lodged pending arraignment in a facility used to incarcerate adults. The juvenile must be kept separate from adult prisoners as required by law. MCR 6.907(B).

## B. Places of Detention Following Arraignment

MCR 6.909(B)(1)–(4) deal with confinement after arraignment:

- (1) Except as provided in MCR 6.909(B)(2) and in MCR 6.907(B) (see above), the juvenile charged with a crime and not released must be placed in a juvenile facility while awaiting trial and, if necessary, sentencing, rather than being placed in a jail or similar facility designed and used to incarcerate adult prisoners.
- (2) On motion of a prosecuting attorney or a superintendent of a juvenile facility where the juvenile is detained, the magistrate or court may order the juvenile confined in a jail or similar facility designed and used to incarcerate adult prisoners upon a showing that the juvenile’s habits or conduct are considered a menace to

\*See Section 3.11(A), above.

other juveniles, or the juvenile may not otherwise be safely detained in a juvenile facility.

(3) The juvenile shall not be placed in an institution operated by the Family Division except with the consent of the Family Division or on order of a court as defined in these rules.\*

(4) The juvenile in custody or detention must be maintained separately from the adult prisoners or adult accused as required by MCL 764.27a; MSA 28.886(1).

MCL 764.27a(3); MSA 28.886(1)(3), allows a juvenile or individual less than 17 years of age who is under the jurisdiction of the circuit court for committing a felony to be confined in a county jail pending trial. Prior approval of the county sheriff is required, and the juvenile must be held physically separate from adults.

MCL 712A.16(1); MSA 27.3178(598.16(1), limits placement of a child in a jail or other place of detention for adults to a period not to exceed 30 days, unless longer detention is necessary for the service of process. Thus, the court must review such a placement at least every 30 days. In addition, the court, upon motion of a juvenile or individual under 17 years of age who is subject to confinement, may, upon good cause shown, order the juvenile or individual to be confined as otherwise provided by law. MCL 764.27a(4); MSA 28.886(1)(4).

\*See Chapter 24 for discussion of “traditional” waiver proceedings.

### 3.12 Places of Detention for Juveniles Charged Under the “Traditional” Waiver Statute\*

Following the grant of a waiver motion in a “traditional” waiver case, the juvenile is transferred to the adult criminal justice system and is subject to the same procedures used for adult criminal defendants.

Juveniles waived under the “traditional” waiver statute need not be kept separate and apart from adult prisoners. MCR 5.950(C)(2). But see 42 USC 5633(a)(13) (prohibits juveniles alleged to be delinquent from being jailed in any institution where they have contact with adult prisoners).

\*See Section 3.8, above.

Because neither the statute, MCL 712A.4; MSA 27.3178(598.4), nor the court rule, MCR 5.950, provide for detention of the juvenile prior to waiver, the rules applicable to felony delinquency cases apply. See MCR 5.901(B)(2) (MCR 5.931–5.950 apply only to delinquency proceedings; both the pretrial detention rule, MCR 5.935, and the “traditional” waiver rule are included in these provisions).\*

### 3.13 Table Summarizing Places of Detention for Juveniles

**Table 1: Places of Detention for Juveniles**

Type of Proceeding	Places Where Juvenile May Be Detained	Authority
<b>Status Offense Cases</b>	Juvenile may be detained in a secure juvenile detention facility if the court finds that the juvenile has wilfully violated a court order and, after a hearing on the record, the court finds that there is no less restrictive alternative appropriate to the juvenile's needs. Status offenders must not be detained in a secure facility designed to incarcerate adults.	MCL 712A.15(3) and (5); MSA 27.3178(598.15)(3) and (5).  <b>See Section 3.9</b>
<b>Misdemeanor Delinquency Cases</b>	Juvenile may be detained in a secure juvenile detention facility, but only if the court determines that such a facility is the least restrictive environment that will meet the needs of the juvenile and the public. Misdemeanants must not be detained in a secure facility designed to incarcerate adults.	MCR 5.935(D)(5), and MCL 712A.15(5); MSA 27.3178(598.15)(5).  <b>See Section 3.9</b>
<b>Felony Delinquency Cases</b>	<p>Juvenile may be detained in a secure detention facility if the court finds there is probable cause that the juvenile committed the offense and one or more of the conditions in MCR 5.935(D)(2)(a)–(d) or MCL 712A.15(2)(a)–(e); MSA 27.3178(598.15)(2)(a)–(e), is fulfilled.</p> <p>Juvenile may be detained in a jail or adult detention facility if the juvenile is 15 years or older and his habits or conduct are considered a menace to other children, or he might not otherwise be safely detained. The juvenile must be placed in a room or ward separate from adults, and for a period not to exceed 30 days, unless longer detention is necessary for service of process. The juvenile must be separated by sight and sound from adult prisoners.</p>	<p>MCL 712A.14(3); MSA 27.3178(598.14)(3), and MCL 712A.15(1); MSA 27.3178(598.15)(1).</p> <p><b>See Section 3.4</b></p> <p>MCL 712A.16(1); MSA 27.3178(598.16)(1), and MCL 764.27a(2); MSA 28.886(1)(2).</p> <p><b>See Section 3.8</b></p>

**Table 1: Places of Detention for Juveniles**

Type of Proceeding	Places Where Juvenile May Be Detained	Authority
<b>Designated Cases</b>	<p>Prior to a preliminary examination, see the rules for felony and misdemeanor delinquency cases, above.</p> <p>After a preliminary examination, a juvenile may be detained in the county jail if the court finds that there is probable cause that a felony was committed and that the juvenile committed it. Prior approval of the sheriff is required, and the juvenile must be held physically separate from adults. Juveniles placed in jail must be separated by sight and sound from adult prisoners.</p>	<p>MCL 712A.2(g); MSA 27.3178(598.2)(g), and MCL 764.27a(3); MSA 28.886(1)(3), and MCR 5.953(G).</p> <p><b>See Section 3.10</b></p>
<b>“Automatic” Waiver Cases</b>	<p>Prior to arraignment, juvenile may be detained in a county or regional juvenile facility, or in a Family Division-operated facility with the consent of the Family Division or pursuant to an order of the circuit court. If no juvenile facility is available or if the juvenile may not otherwise be safely detained, court may order juvenile detained in an adult facility. The juvenile must then be kept physically separate from adults.</p> <p>Following arraignment, the juvenile must be detained in a juvenile facility, unless the juvenile was placed in an adult facility before arraignment pursuant to the rules above, or unless upon motion of the prosecutor or superintendent of a juvenile facility housing the juvenile, the court finds that the juvenile’s habits or conduct are considered a menace to other children, or the juvenile might not otherwise be safely detained. The juvenile must then be kept physically separate from adults.</p>	<p>MCR 6.907(B)(1)–(3) and MCL 712A.2(f); MSA 27.3178(598.2)(f).</p> <p><b>See Section 3.11(A)</b></p> <p>MCR 6.909(B)(1)–(4) and MCL 764.27a(3); MSA 28.886(1)(3).</p> <p><b>See Section 3.11(B)</b></p>
<b>“Traditional” Waiver Cases</b>	<p>Prior to waiver, see the rules for felony delinquency cases, above.</p> <p>Following waiver, the juvenile may be detained in the same manner as an adult criminal defendant and is not required to be kept separate from adult prisoners.</p>	<p>MCR 5.950(C)(2).</p> <p><b>See Section 3.12</b></p>

### 3.14 Fingerprinting and Photographing of Juveniles in Family Division

The Family Division has discretion to permit fingerprinting\* or photographing, or both, of any minor who is in court custody. When so ordered, the fingerprints and photographs must be placed in confidential files capable of being located and destroyed on court order. MCR 5.923(C).

MCL 28.243(1); MSA 4.463(1), requires the police to take the fingerprints of a juvenile arrested for a “reportable juvenile offense.”\*

\*See Form JC 16.

\*See Section 4.10(A) for a list of “reportable juvenile offenses”.

